

Application Serial No. 09/939,412  
Amendment dated May 14, 2007  
Reply to Office Action dated February 12, 2007

**REMARKS**

Applicant submits, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. §1.114.

Claims 1-7, 14-16, and 41-43 are pending. Claims 14-16 and 41-43 have been allowed. Claims 1-7 have been rejected.

**Claim Rejections - 35 U.S.C. § 102(b)**

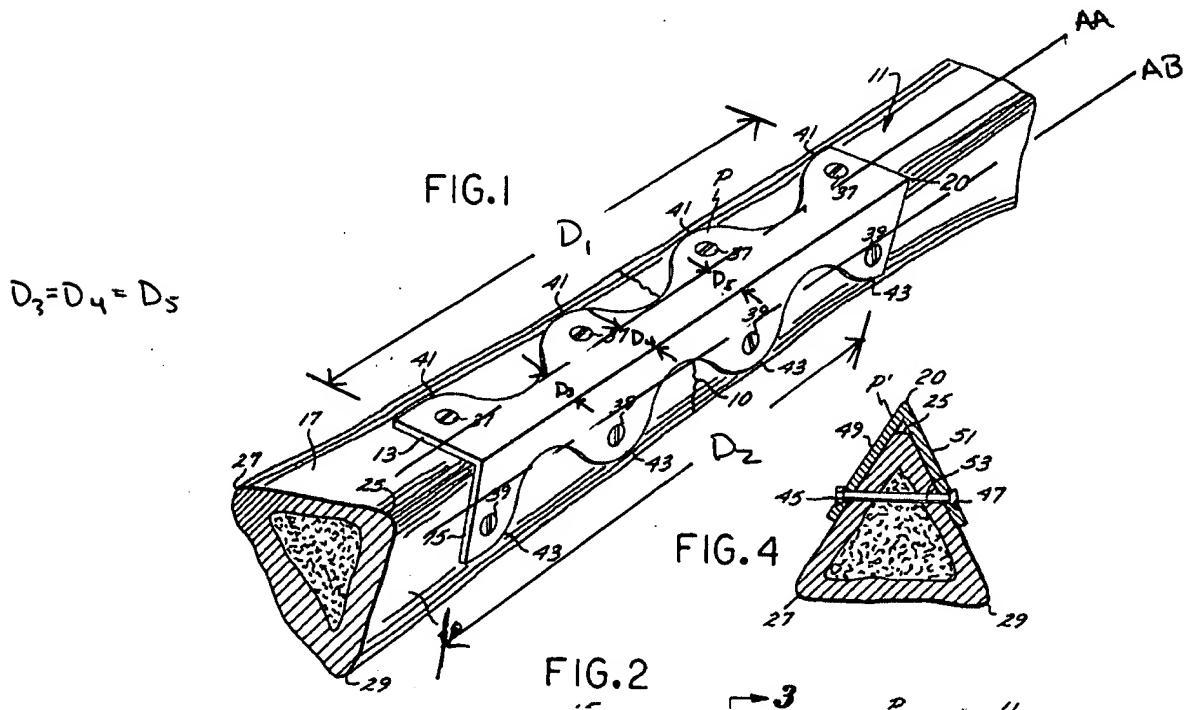
Claims 1-7 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,593,709 to Halloran ("Halloran '709").

Halloran '709 discloses compression plate P, shown in Fig. 1, including plate portions 13, 15 extending along adjacent sides 17, 19 of tibia 11. Plate portions 13, 15 include a plurality of apertures 33, 35 (Fig. 3) extending therethrough. Referring to Fig. 3, screws 37, 39 are configured to extend through apertures 33, 35, respectively. Additionally, as shown in Fig. 4, bores 45, 47 on opposing sides 49, 51 are aligned and transverse pin 53 may be inserted to extend through bores 45, 47.

Applicants respectfully submit that amended independent Claim 3, which has been amended to incorporate, *inter alia*, the limitations of amended independent Claim 1, is not anticipated by Halloran '709. Specifically, amended independent Claim 3 calls for a bone plate assembly including, *inter alia*, a bone plate including first and second extending portions defining an angle therebetween, the first portion forming an elongated plate portion having a plate portion longitudinal axis extending along the longest dimension of the elongate plate portion, the second portion forming an elongate blade portion having a blade portion longitudinal axis extending along the longest dimension of the elongate blade portion and a blade end, *the blade portion longitudinal axis transverse to the plate portion longitudinal axis*, the blade end having a tapered blade edge tapering along at least a portion of the longitudinal axis of the elongate blade portion, the blade portion have a first cross-section taken at a point on the blade portion longitudinal axis *furthest from the plate portion* and a second cross-section taken at a point on the blade portion longitudinal axis *nearer the plate portion than the first cross-section*, the first cross-section being less than the second cross-section.

As set forth above, amended independent Claim 1 calls for an elongate plate portion having a plate portion longitudinal axis extending along the longest dimension of the elongate plate portion and an elongate blade portion having a longitudinal axis extending along the longest

dimension of the elongate blade portion. Referring to annotated Fig. 1 of Halloran '709 as set forth below, the dimension labeled  $D_1$  is the longest dimension of plate portion 13 and includes longitudinal axis AA. Similarly, the dimension labeled  $D_2$  is the longest dimension of plate portion 15 and includes longitudinal axis AB.



Amended independent Claim 3 calls for *the blade portion longitudinal axis transverse to the plate portion longitudinal axis*. In contrast to amended independent Claim 3, longitudinal axis AA and AB of plate portions 13, 15 of the plate of Halloran '709 are parallel.

Furthermore, amended independent Claim 3 calls for *the blade portion having a first cross-section taken at a point on the blade plate longitudinal axis furthest from the plate portion and a second cross-section taken at a point on the blade plate longitudinal axis nearer the plate portion than the first cross-section, the first cross-section being less than the second cross-section*. As shown in annotated Fig. 4 of the present application set forth below, the first cross-section  $C_1$  taken at a point on the blade plate longitudinal axis BLA is smaller than second cross-section  $C_2$  taken at a point on blade plate longitudinal axis BLA nearer the plate portion the first cross-section  $C_1$ .

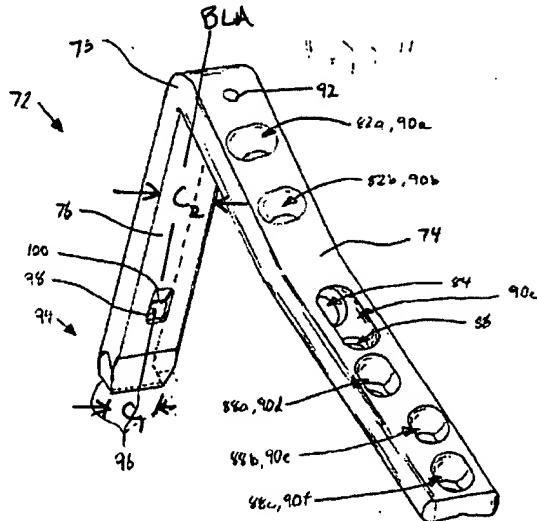


FIG. 4

In contrast to amended independent Claim 3, the longitudinal axis AA of plate 13 is not transverse to longitudinal axis AB of plate 15, but is parallel to longitudinal axis AB of plate 15, as discussed above. As such, no point along longitudinal axis AA of plate portion 13 of Halloran '709 is any further from plate portion 15 than any other point along longitudinal axis AA, i.e., distances D<sub>3</sub>, D<sub>4</sub>, D<sub>5</sub> are equal. Thus, the plate of Halloran '709 is physically incapable of having a first cross-section taken at a point on the blade portion longitudinal axis *furthest from the plate portion* and a second cross-section taken at a point on the blade portion longitudinal axis *nearer the plate portion*.

For at least the foregoing reasons, applicants respectfully submit amended independent Claim 3, as well as Claims 2 and 4-7, which depend therefrom, are not anticipated by Halloran '709.

Further, Applicants respectfully submit that new Claim 44, which depends from amended independent Claim 3, is not anticipated by Halloran '709. Specifically, amended independent Claim 44 calls for the first cross-section, i.e., the cross-section taken at a point on the longitudinal axis furthest from the plate portion, including a substantially U-shaped cross-section.

Halloran '709 lacks a first cross-section taken at a point on the longitudinal axis furthest from the plate portion including a substantially U-shaped cross-section. Specifically, as shown in Figs. 3 and 4 of Halloran '709, portion 13 has a generally solid cross-section extending along the width thereof. Advantageously, the design of the blade end of the present invention facilitates its insertion into bone. In contrast, the design of the plate of Halloran '709 is configured to facilitate

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the installation of the plate entirely on the bone surface. *See* Halloran '709, column 2, lines 40-44.

For at least the foregoing reasons, applicants respectfully submit that new Claim 44 is not anticipated by Halloran '709.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefore and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,

Matthew B. Skaggs  
Registration No. 55,814  
Attorney for Applicants

MBS/nw

BAKER & DANIELS LLP  
111 East Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700

Enc. Return Postcard

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: May 14, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814  
Name of Registered Representative

Matthew B. Skaggs  
Signature

MAY 14, 2007  
Date